

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY L. MCCRORY,

Plaintiff,

v.

Case No. 13-12586

Patrick J. Duggan

FREDRICK LEPLY, MARY ROY
KELLY, and CYNTHIA LANE,

Defendants.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Plaintiff, a Michigan prisoner, recently filed a *pro se* civil rights complaint under 42 U.S.C. § 1983, along with an application to proceed without prepayment of the filing fee. Defendants are Attorney Frederick J. Lepley, St. Clair County Assistant Prosecutor Mary Roy Kelly, and St. Clair County Circuit Judge Cynthia Lane. In his Complaint, Plaintiff alleges that Defendants conspired to obstruct justice and violate his constitutional rights during his prosecution for aggravated stalking. On July 24, 2013, this Court issued an order denying Plaintiff's application to proceed without prepayment of the filing fee. (ECF No. 9.) In the order, the Court informed Plaintiff that he needed to pay the filing fee within thirty days or the action would be dismissed pursuant to 28 U.S.C. § 1915(g), as Plaintiff has filed more than three complaints while a prisoner which were dismissed as

frivolous or for failure to state a claim.

Plaintiff did not pay the filing fee before the thirty days expired. On July 31, 2013, the Court received a letter from Plaintiff addressed to the Clerk of the Court in which Plaintiff claims *inter alia* that he is being falsely imprisoned. In his letter, Plaintiff mentions that he is in imminent danger of serious physical injury and death. However, he does not identify a real and proximate threat of serious physical injury existing at the time his Complaint was filed to state an exception to § 1915(g)'s "three-strikes rule." *See Vandiver v. Prison Health Servs., Inc.*, – F.3d –, 2013 WL 4309118 (6th Cir. Aug. 16, 2013) (explaining that, to avoid the three-strikes rule, a prisoner must plead facts in his complaint from which the court can reasonably infer that the prisoner was under an existing danger at the time he filed his complaint). Moreover, the threat Plaintiff refers to in his letter to the Clerk is not the subject of his current Complaint. Instead, Plaintiff is complaining in the pending lawsuit (as he did in his previously dismissed lawsuits) about his trial and conviction for which he is now incarcerated.

Accordingly,

IT IS ORDERED, that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(g).

Dated: September 9, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:

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